



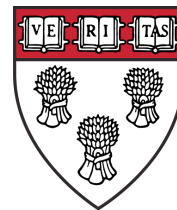
# DIGITAL ACCESS TO SCHOLARSHIP AT HARVARD

## James Wilson, Harvey Wiley, and the Bureau of Chemistry: Examining the “Political” Dimensions of the Administration and Enforcement of the Pure Food and Drugs Act, 1906-1912

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**JAMES WILSON, HARVEY WILEY, AND THE BUREAU OF CHEMISTRY:  
EXAMINING THE “POLITICAL” DIMENSIONS OF THE ADMINISTRATION AND ENFORCEMENT OF  
THE  
PURE FOOD AND DRUGS ACT, 1906-1912**

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## **ABSTRACT**

While much attention has focused on the individuals and events responsible for and leading to the passage of the historic Pure Food and Drugs Act of 1906, considerably less attention has focused on the implementation, administration, and enforcement of the law in the years directly following its enactment. It is this topic that will be the focus of this paper, specifically the *politics* surrounding the implementation of the landmark legislation. It is easy to forget that those within the Bureau of Chemistry charged with administering the historic food and drug law were ultimately political actors operating against a political backdrop. This paper will seek to put this political dimension of the law into sharp focus, specifically examining and analyzing the bureaucratic politics, personal politics, partisan politics, and electoral politics surrounding the Bureau of Chemistry in its attempts to administer, implement, and enforce the landmark Pure Food and Drugs Act of 1906.

## INTRODUCTION

Since its enactment over a century ago, considerable attention has focused on the remarkable, monumental campaign that resulted in enactment of the Pure Food and Drugs Act of 1906. For those familiar with the events leading up to its passage, this is hardly surprising. The story of the young, brilliant crusader, Harvey Wiley leading the charge for radical reform of the nation's food and drugs laws, aided by muckrakers such as Upton Sinclair and Samuel Hopkins Adams, and who ultimately galvanizes the country and wins over a skeptical Congress and President to secure support for the law is undoubtedly a gripping one that is likely to be examined and retold for years to come.

Considerably less attention, however, has been paid to the implementation and enforcement of the new law in those years immediately following its enactment. It is this topic that will be the focus of this paper, specifically the *politics* surrounding the implementation of the landmark legislation. It is easy to forget that those within the Bureau of Chemistry charged with administering the historic food and drug law were ultimately political actors operating against a political backdrop. This paper will seek to put this political dimension of the law into sharp focus, specifically examining and analyzing the bureaucratic politics, personal politics, partisan politics, and electoral politics surrounding the Bureau of Chemistry in its attempts to administer, implement, and enforce the landmark Pure Food and Drugs Act of 1906.

It is worth noting what this paper does *not* seek to do: it does not seek to re-tell the story of those characters and events responsible for securing passage of the 1906 Act against all odds. That story has been and need not be repeated here. Instead, this paper focuses on the aftermath, specifically the six years between the law's enactment to Wiley's resignation as Chief Chemist, and aims to investigate how the various kinds of politics afflicting the Bureau of Chemistry

ultimately affected the administration of the new law and those within the Bureau charged with doing so.

Part I of this paper will offer brief backgrounds on two of the central characters of our story: Secretary of Agriculture, James Wilson and Bureau of Chemistry Chief, Harvey Wiley. This section will endeavor to offer not just mere biographical information on these figures but to also provide insight on how their respective backgrounds shaped their respective beliefs and motivated their decisions, explaining their seemingly “political” behavior.

Part II will detail how the personal and professional struggle between these men, both before and after passage of the 1906 Pure Food and Drugs Act, reflected a larger struggle both within and beyond the Bureau of Chemistry over how the new law should be administered and enforced. This section will detail how personal and professional politics between the two men led to an erosion of ties between them while also igniting a constant and seemingly endless array of bureaucratic infighting within the Chemistry Division and the Department of Agriculture more generally.

By examining a series of “labeling” crises, Part III will put into sharper focus the various types of politics at work within the Bureau of Chemistry at this time, and will illustrate how they led to constant strife and bickering among Wiley and his colleagues within the Bureau of Chemistry while also affecting implementation of the law. As this section will illustrate, the various labeling controversies would render Wiley’s tenure as Chief Chemist increasingly untenable, ultimately leading to his resignation in 1912.

Part IV, the final section of this paper, will investigate the remarkable political ramifications that Wiley’s resignation would have for the Republican Party during the presidential election of 1912. In brief, this part of the paper will demonstrate how Wiley, a

staunch and lifelong Republican who once wrote that a, “Democrat sustains the same relation to the political world, that a damned sinner does to the moral,”<sup>1</sup> felt betrayed by his erstwhile Republican employers, campaigned on behalf of Democrats, and ultimately played a decisive role in turning the pure food issue against the GOP, helping Democrats win the White House in 1912.

Some concluding thoughts will follow.

## **PART I: BRIEF BACKGROUNDS ON JAMES WILSON & HARVEY WILEY**

### **James Wilson**

Born in Scotland just like the Founding Father with whom he shares a name, James Wilson moved to the United States at the age of sixteen with his family in 1851. Originally arriving in Connecticut, the Wilson family felt that the tiny New England state held little promise and few prospects for them, and they ultimately moved to Iowa, settling a farm in northern Tama County near the town of Traer.<sup>2</sup>

In 1861 shortly before the eruption of the Civil War, Wilson bought his own farm at the tender age of twenty-six, and two years later, married Esther Wilburn. Adeptly anticipating Iowa’s future as an agricultural center of the country, Wilson grew corn to feed pigs and cattle on his farm at a time when most farmers during this period were raising wheat as a cash crop.<sup>3</sup>

Wilson’s long political career began with a three-year stint as a member of the Tama County Board of Supervisors. Elected to the Iowa House of Representatives in 1867, he served as speaker for two years before becoming a professor of agriculture at present-day Iowa State University. In 1872, Wilson was elected to the United States House of Representatives,

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<sup>1</sup> Hanover Notebook, 158, Harvey W. Wiley Papers, *available at* <http://www4.lib.purdue.edu/archon/index.php?p=collections/controlcard&id=609>

<sup>2</sup> See generally MARGARET LEECH, *IN THE DAYS OF MCKINLEY* (Harper and Brothers) 1959

<sup>3</sup> *Id.*

representing Iowa's Fifth Congressional District where his legislative record on agricultural issues was an extensive one. In Congress, Wilson became known as a "Granger Congressman"<sup>4</sup> for his strong support for government assistance to farmers, and was responsible for introducing in Congress the very first bill dedicated to elevating the Department of Agriculture to cabinet-level status. In 1883, Wilson served on the conference committee that established the Bureau of Animal Industry.

The Bureau, tasked with inspecting meat for export with the purpose of controlling the spread of animal diseases, represented a new type of agency that effectively sought to combine scientific research with potent regulatory powers. Wilson's work on the bill reflected his deeply held belief that government should not just support the country's agricultural interests, but should do so in a very specific and particular way.<sup>5</sup> His time as professor and later dean of Iowa State (formerly Iowa Agricultural College), strengthened his conviction that government should develop and promote agricultural science—science calibrated specifically towards solving agricultural problems.<sup>6</sup>

Although he lacked any formal scientific training or any interest in pure scientific research, Wilson espoused a version of science that contained an "agricultural squint" which could serve "the man in the field."<sup>7</sup> After losing a hotly contested congressional election in 1882 yet still serving out the term after being seated following the election, Wilson returned to Iowa and rejoined the faculty at Iowa State, where, in addition to his professorial and deanship duties, he served as director of the agricultural Experiment Station from 1890 to 1897.

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<sup>4</sup> A. HUNTER DUPREE, *SCIENCE IN THE FEDERAL GOVERNMENT* 163-67 (Harvard University Press) (1957)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> VERNON WILCOX, *TAMA JIM* 73 (The Stratford Company) (1930)

Although a figure of considerable local import, Wilson suddenly rose to national prominence after President William McKinley appointed him Secretary of Agriculture in 1897. Reporting on the appointment, the *New York Sun* quipped that the Wilson was “known [only] to Iowa and the vegetable kingdom.”<sup>8</sup> Other newspapers confused him with James F. Wilson, a former United States Senator from the same state. Despite his relative national obscurity, Wilson was well known to McKinley as they had served together in the U.S. House of Representatives, and his appointment as Secretary of Agriculture fulfilled the president’s obligation to Iowa Republicans for their 1896 election support.

Eminently qualified for the job, Wilson’s tenure as Agriculture Secretary stood in stark contrast to that of his predecessor, J. Sterling Morton.<sup>9</sup> During his time as Secretary, Morton reduced the size of the Department of Agriculture, regularly returning funds to the United States Treasury. Known for ruling with a heavy hand as well as for his frugality, Morton closely monitored the smallest expenditures, routinely reprimanding department employees for perceived excessive spending. Although Morton supported scientific research, he did so only in those areas he believed would serve all farmers as opposed to special interest groups.

Wilson’s approach as Secretary was markedly different. Upon assuming office, Wilson toured the entire Department and acquainted himself with its employees and their activities. He was known to wander around the department halls, meeting and talking with staff and colleagues, eager to hear and act on new ideas he believed carried potential.<sup>10</sup> With close ties to Congress from his previous time serving there, Wilson was familiar with Washington, and

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<sup>8</sup> *New York Sun*, Sept. 8, 1897, cited by WILLIAM LEE HOING, JAMES WILSON AS SECRETARY OF AGRICULTURE (unpublished Ph.D. Dissertation at the University of Wisconsin) (1964) *available at* <http://www.worldcat.org/title/james-wilson-as-secretary-of-agriculture-1897-1913/oclc/2220628>

<sup>9</sup> Interestingly, Secretary Morton was responsible for conceptualizing “Arbor Day”

<sup>10</sup> Hoing, *supra* note 8



particularly the appropriations process, rendering him an effective and powerful advocate of the Agriculture Department. He routinely secured funds to expand the work and research of his various bureau chiefs, even when their work did not directly focus on agricultural issues yet could potentially benefit American farmers.<sup>11</sup> For example, while the Bureau of Animal Industry, the Bureau of Entomology and Soils, and the Weather Bureau all expanded under Wilson's watch, so too did the Forest Service, Bureau of Plant Industry, and the Bureau of Chemistry. These departments expanded into innovative, new areas, experienced significant organizational changes, and witnessed dramatically increased budgets. The chiefs of these bureaus, Beverly Galloway, Gifford Pinchot, and Harvey Wiley, respectively, were all men of considerable import, who flourished in various capacities under Wilson.

Pinchot, for example, garnered prominence and praise for his efforts towards successfully bringing the National Forest Service from the Interior Department to the Department of Agriculture's jurisdiction. His exhaustive national forest management and preservation plans earned him widespread support from a broad range of interest groups including the American National Livestock Association, mining companies, logging companies, and other similar organizations.<sup>12</sup> His work kept him in the public eye and made him of a darling of the Roosevelt Administration, affording him unparalleled access to the highest echelons of political power. He attributed his success to Wilson, recounting in his autobiography, "[Secretary Wilson] was a grand man to work for...He knew enough...to give a man his head-let him alone, so long as he stayed on the right track."<sup>13</sup> Without Wilson's support, Pinchot writes, "We could have never done our work and won our fight as we did." His words are all the more remarkable given that

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<sup>11</sup> *Id.*

<sup>12</sup> JAMES PENICK, JR., *PROGRESSIVE POLITICS AND CONSERVATION: THE BALLINGER-PINCHOT AFFAIR* (University of Chicago Press) (1968)

<sup>13</sup> GIFFORD PINCHOT, *BREAKING NEW GROUND* 137 (Harcourt, Brace, & Co.) (1947)

he wrote them years after the Ballinger Affair that led to his split with Wilson and dismissal from the Taft Administration in 1912.

Galloway, chief of the Forest Service, similarly achieved industry-wide prominence for reorganizing those divisions beneath him to create the Plant Industry, but more importantly, for also innovating new farmer-oriented services. By architecting new services to provide to America's farmers and then marshalling the necessary resources to furnish them, Galloway earned significant acclaim.<sup>14</sup> Like Pinchot, he too acknowledged Wilson's role in enabling his success, averring that he could not have achieved what he had without the Secretary's crucial support.<sup>15</sup>

Harvey Wiley, hero to the modern consumer protection movement, champion of the Pure Food and Drugs Act, and first commissioner of the Food and Drug Administration, would prove to be the exception among his bureau chief counterparts. His conflict with Wilson and a host of others in the Department would ultimately ruin the Iowan's reputation and, more importantly, have far-reaching and profound ramifications for the presidential administrations for which the two men worked. Before turning our attention to this issue—one of the major focuses of this paper—it is first worth briefly exploring Harvey Wilson's life, and those factors that ultimately led him on a collision course with Secretary Wilson and some of his other Bureau of Chemistry colleagues.

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<sup>14</sup> Dupree *supra* note 4 167-69

<sup>15</sup> *Id.*

## **Harvey Wiley**

Born in 1844 in a log farmhouse near Kent Indiana in Jefferson County, Wiley was the son of a farmer who found his childhood days monopolized by farm chores.<sup>16</sup> He enrolled in Hanover College in 1863 but submitted to his patriotic compulsions to drop out of school and enlist with the Union Army shortly afterwards. One year later in 1864, Wiley found himself as a corporal in Company I of the 137<sup>th</sup> Regiment Indiana Volunteers at the start of the Civil War. His desire to serve his country, however, was cut short as he fell victim to hook worm, and Wiley returned to Hanover in 1865, majoring in humanities, graduating with a bachelors two years later, and then with a masters degree three years after that. While completing his humanities education, Wiley served as a professor of Greek and Latin at Butler College (formerly Northwestern Christian University) between 1868 and 1870.

Wiley enrolled at Indiana Medical College shortly thereafter, earning his medical degree in 1871 and accepted a teaching position there after graduation. Wiley taught the state's first laboratory course in chemistry at Indiana Medical College before receiving another bachelor's degree from Harvard in 1873. By 1874 Wiley accepted a tenured faculty position at the newly minted Purdue University while at the same time being appointed state chemist of Indiana.

He next traveled to Germany to deepen his chemistry research, and was eventually elected to the prestigious German Chemical Society. His work in Germany focused on food adulteration, and when he returned to Purdue he published a paper—the first of many—on food adulteration, a topic that would become one of the primary focuses of his life's work. The paper examined sugar adulteration with regards to the use of glucose, igniting controversy among the nation's beekeepers who feared that Wiley's findings would encourage the use of artificial honey

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<sup>16</sup> See generally, HARVEY W. WILEY, AN AUTOBIOGRAPHY (Kessinger Publishing) (Originally published 1930) (2005)

and adversely impact the market of natural honey.<sup>17</sup> Demonstrating the strategic and political brilliance that would later catapult him to national prominence (but perhaps also be responsible for his downfall), Wiley filed a report with the Indiana State Board of Health illustrating glucose's harmful impact on honey. He also enumerated the means of preventing the adulteration, effectively turning his critics into admirers, prompting him to later observe, "the beekeepers of the country became my most enthusiastic supporters."<sup>18</sup>

In 1882 Indiana Governor Albert Porter appointed Wiley as the state's delegate to the National Convention of Sorghum Growers in St. Louis, Missouri. At the convention, Wiley met George Loring, United States Commissioner of Agriculture. Seeking to replace his Chief Chemist, Peter Collier, with an individual who adopted a more objective and scientific approach to the study of sorghum, he felt he had found his man in Wiley. After two initial meetings with Wiley that left him highly impressed, Loring offered him the job of Chief Chemist at the Department of Agriculture. The timing was indeed fortuitous. Wiley had been under consideration to become Purdue's new president, yet was passed over for the job, allegedly because he was "too young and too jovial," held eccentric religious beliefs, and was unmarried.<sup>19</sup> He also provoked the ire of school administrators for riding a bicycle to campus, which was apparently below the dignity expected of professors.<sup>20</sup>

There is no doubt that Wiley was supremely qualified for the job. Armed with a wealth of practical agricultural knowledge, a sympathetic posture towards the agricultural industry,

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<sup>17</sup> See generally Jonathon W. White Jr., *Wiley Led the Way: A Century of Federal Honey Research*, JOURNAL OF THE ASSOCIATION OF ANALYTICAL CHEMISTS, Vol. 70 No. 2 (1987)

<sup>18</sup> Wiley, *supra* note 16 at 183-184

<sup>19</sup> *Past Commissioners, Harvey W. Wiley*, U.S. Food and Drug Administration, available at <http://www.fda.gov/AboutFDA/CommissionersPage/PastCommissioners/ucm113692.htm>

<sup>20</sup> OSCAR E. ANDERSON JR., *THE HEALTH OF A NATION: HARVEY W. WILEY AND THE FIGHT FOR PURE FOOD* 25 (University of Chicago Press) (1958)

longstanding experience as state chemist, and a soon-to-be demonstrated talent for public relations, Wiley seemed ideally suited for the post. At the same time, however, it must be emphasized that Wiley's Republican affiliation was a crucial factor behind his appointment to the Department of Agriculture. Republican Chester A. Arthur controlled the White House and thus all federal appointments and thus it is unlikely that Wiley would have secured the post had he been a Democrat.<sup>21</sup> As Wiley and his adversaries would discover over the years, partisan politics certainly mattered and inevitably affected the course of the Chief Chemist's work.

As Chief Chemist of the Department of Agriculture, Wiley moved quickly to expand upon his food adulteration work at the federal level. Marshalling the new resources now at his disposal, he ordered the establishment of sugar factories and other government laboratories around the country so that he could further his investigations and research on the issue.

Wiley's rapidly rising career, however, would be threatened by political realities seemingly unrelated to his work: the election of the corpulent Democrat, Grover Cleveland, to the White House in 1884 nearly brought an abrupt end to Wiley's tenure as Chief Chemist. Illustrating that not all Democrats were perfidious creatures, however, Wiley's Democratic friends vouched for Wiley with the new administration, emphasizing his talents and abilities over his political and ideological affiliations.<sup>22</sup>

The Cleveland Administration retained Wiley as Chief Chemist for the duration of both its terms, and he passionately and aggressively continued his food adulteration work, while also launching investigations into misbranding and labeling, issues that would become a volatile and controversial ones during the Roosevelt and Taft Administrations. His efforts in these realms as

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<sup>21</sup> Anthony Gaughan, *Harvey Wiley, Theodore Roosevelt, and the Federal Regulation of Food and Drugs*, Harvard Law School, Winter 2004, p. 5

<sup>22</sup> *Id.*

well as towards promoting the agricultural industry significantly raised Wiley's national profile and stature. In 1892, for example, he was elected to the presidency of the American Chemical Society. He went on speaking tours around the United States to raise public awareness of issues of import to him including food adulteration and misbranding. Doing so made him a household name throughout the country, and definitively established his credentials as an effective consumer protection advocate, scientist, researcher, and reformer.

By the time William McKinley was elected to the presidency in 1896, Wiley had achieved considerable fame and name and he was one of the most well known public figures in the United States. Yet, fame would prove to be both a blessing and a burden for Wiley, and McKinley's ascension to 1600 Pennsylvania Avenue would not only put into sharp focus the political dimensions of Wiley's work but would also put him on a collision course with his new departmental colleagues and superiors—most notably Wilson—that would forever change the professional lives of the men involved.

## **PART II: CONFLICT ARISES BETWEEN WILSON AND WILEY**

Shortly after William McKinley's election to the White House in 1896, Wiley wrote to a colleague that, "It is so good to have a republican [sic] administration once more. I hope that it will last for twenty years at least."<sup>23</sup> Wiley's exultation was motivated by his belief that while his tenure as Chief Chemist under the Democratic Administrations had been successful, its efficacy had been greatly limited as a result of partisan politics within the Department of Agriculture. In Wiley's view, Secretary Morton had downgraded and undermined the Chemistry Bureau because its chief was a Republican. He believed that Morton had done so by

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<sup>23</sup> Wiley to S.S. Grisby, Mar. 6, 1897, Wiley Papers, *available at* <http://www4.lib.purdue.edu/archon/index.php?p=collections/findingaid&id=609&q=&rootcontentid=469#id469>

promoting other bureaus within the department at its expense. He clashed with the other bureau heads who had hired their own chemists and who, Wiley believed, were encroaching on areas that he considered the rightful province of his bureau.

With the return of a Republican administration, Wiley hoped to return to his bureau to the center of importance in the scientific endeavors of the department. He informed the newly appointed Secretary Wilson that he, Wiley, was the good Republican among various chiefs of the scientific sections of the department. He claimed that the administration had appointed “10 of the 13” bureau heads, and that among them all, he was a “strong protectionist.”<sup>24</sup> Despite Wiley’s pleas, Wilson resisted bringing all the chemical work back to the Chemistry Division, prompting Wiley to reach out to his friends in the administration to politically pressure Wilson to make the desired changes. Wiley also began openly challenging the work of other scientific bureaus, hoping that his statute in conjunction with his questioning of the quality and soundness of some of their work would compel Wilson to make the changes the Chief Chemist sought.

Wiley’s maneuvering unsurprisingly angered Wilson. Wiley’s campaign to force the secretary’s hand had created problems with the other bureau chiefs and made Wilson appear impotent and unable to control the bureaucratic infighting within his agency. “If anybody here gets too big for his trousers,” Wilson warned, “we shall have to give him the privilege of going where trousers of larger dimensions are furnished.”<sup>25</sup> Clearly, Wilson and Wiley’s relationship had gotten off on the wrong foot; Wiley’s prominence clearly had its advantages but also its disadvantages.

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<sup>24</sup> Wiley to C.I. Long, Feb. 13, 1897, *available at* <http://www4.lib.purdue.edu/archon/index.php?p=collections/findingaid&id=609&q=&rootcontentid=469#id469>

<sup>25</sup> Hoing, *supra* note 8 at 101-02

Despite the fact that Wiley and Wilson had not endeared themselves to one another Wilson was committed to supporting his agency's most prominent bureau chief. Wilson encouraged Wiley to continue his nationally celebrated food adulteration work believing that adulterated food greatly harmed the reputation of American agricultural products and thus undermined exports.

The expansion of the government's food adulteration activities, however, required passage of new legislation, specifically a pure food and drug law that placed administrative authority with his bureau, something that Wiley had sought unsuccessfully for more than a decade.<sup>26</sup> Wiley recognized early on that securing such a law would require putting together a coalition of powerful and like-minded individuals and interest groups. He courted and garnered the support of groups such as the Heinz Company, sugar refiners, baking powder refiners, and straight-whiskey producers.<sup>27</sup> While courting these interests, however, Wiley alienated other business groups including corn-syrup producers, rectified whiskey, alum manufacturers, and users of preservatives through his well-publicized statements condemning their products. Wiley's statements predictably created strong opposition, albeit not necessarily against the food law, but rather to Wiley as administrator of the law. Wiley responded to his critics by launching vitriolic personal attacks against them, impugning their honesty and the quality of their products, and routinely characterizing them as cheats, poisoners and their products as adulterated frauds.<sup>28</sup>

While he supported the pure food and drug law, Wilson found Wiley's behavior alarming and cause for concern. He believed that Wiley was seeking too much publicity through the press and counseled Wiley against these tactics. Wilson feared that Wiley's actions would damage the

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<sup>26</sup> See generally Anderson, *supra* note 20

<sup>27</sup> See generally James Harvey Young, *The Long Struggle for the 1906, FDA CONSUMER* 12-16 (1987)

<sup>28</sup> Anderson, *supra* note 20



reputation of all American food products worldwide.<sup>29</sup> Wiley more or less complied with Wilson's request, and turned to indirect methods of securing support for his publicity campaign in favor of the new food law. In addition to his collaboration with such prominent public figures such as Alice Lahey whose efforts led to more than 1 million women writing the White House in support of the Pure Food and Drugs law, others such as straight-whiskey makers, muckraking journalists, United States Senators, and even author-activist Upton Sinclair were all ready and willing to join Wiley's campaign.<sup>30</sup> Finally, in 1906, Congress passed the long-awaited and sought after legislation. President Theodore Roosevelt, a late convert to Wiley's cause, rode to Capitol Hill from the White House and signed the bill into law.

Approved by overwhelming majorities in both the House and Senate, the new legislation prohibited interstate or foreign commerce in any food or drug that was adulterated or misbranded within the meaning of certain general definitions.<sup>31</sup> Violations were punishable by fine or imprisonment or both, although a dealer was to be immune from prosecution when he could produce a guarantee from either a retailer or manufacturer that items of concern did not violate the law. Adulterated or misbranded products could be proceeded against in federal district courts and seized by libel for condemnation. Though uniform regulations for carrying out these provisions were to be formulated by the Secretaries of the Treasury, Commerce, Labor, and Agriculture, responsibility of the administration rested in Wilson's department exclusively. Food and drugs were to be examined solely by the Bureau of Chemistry. If adulteration or misbranding had been found to have taken place, the Secretary of Agriculture was to give notice to the party from whom the sample was obtained. Anyone so notified was to be given a hearing,

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<sup>29</sup> *Id.* at 149-52

<sup>30</sup> Again, for a general account of passage of the law, see Andersen *supra* note 20 and Young, *supra* note 27

<sup>31</sup> *Id.*

and if it appeared that the law had been violated, the Secretary was at once to certify the facts to the proper district attorney.

Passage of the Pure Food and Drugs Act was undoubtedly Wiley's greatest professional (and probably personal) achievement. His efforts would lead the country to bestow upon him the mantle of "Father of the Pure Food and Drugs Law." That enforcement of the newly minted law was given to the Bureau of Chemistry as opposed to either the Department of Commerce or Department of the Interior is a testament to the scientific qualifications which Wiley and the Bureau of Chemistry brought to the study of food and drug adulteration and misbranding.

Despite Wiley's tremendous triumph, controversy quickly erupted over the administration and implementation of the law. Many interests groups including fruit growers, canners, and milk producers, who had opposed the new law raised questions over Wiley's ability to fairly implement the law, citing the hard-knuckled tactics and personal attacks he had engaged in to secure passage of the Pure Food and Drugs Act.<sup>32</sup> Other business groups who had supported Wiley during his arduous battle over the law, on the other hand, now expected substantial benefits from Wiley's rulings. The firestorm served to undermine both Secretary Wilson's and President Roosevelt's confidence in the Chief Chemist.<sup>33</sup>

In response, Secretary Wilson—with President Roosevelt's explicit approval—created the Board of Food and Drug Inspection, which comprised of Wiley, George P. McCabe—the Agriculture Department's aggressive and hyper-competent Solicitor— and finally Frederick L. Dunlap, Professor of Chemistry at the University of Michigan, who was brought in specifically for the post and given the title "Associate Chemist." The board was to consider all questions

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<sup>32</sup> See generally CLAYTON ANDERSON COPPIN, *THE POLITICS OF PURITY: HARVEY WASHINGTON WILEY AND THE ORIGINS OF FEDERAL FOOD POLICY* (University of Michigan Press) (1999)

<sup>33</sup> *Id.*, quoting letter from Hough to Wilson, dated Dec. 1906

upon which the decision of the Secretary was necessary, to report its findings to him, and to conduct all hearings of the alleged violations.

There is little doubt that the establishment of the Board of Food and Drug Inspection was a deliberate move on Wilson's part to restrain Wiley, who in turn interpreted the decision to create the board as a direct attack on himself and the integrity of his much beloved food and drug law. Wilson's decision was likely motivated by his desire to reduce his dependence on the increasingly troublesome Wiley who had ignited considerable bureaucratic infighting within the Department.<sup>34</sup> Although Wiley was made chairman of the board, each member reported directly to Secretary Wilson thus allowing them to essentially circumvent Wiley. Immediately following the creation of the board, Wiley relentlessly attacked the honesty and integrity of its two newest members—and by extension Wilson—in an attempt to discredit them and to retain sole control over the implementation and administration of the new law.

The creation of the Board of Food and Drug Inspection in 1907 marked the beginning of a long battle between Wiley and his department superiors and colleagues that would center around a series of labeling crises and would ultimately result in his forced retirement from government service five years later in 1912. Those labeling crises, the politics surrounding them, and the acute strain they created between Wiley, Wilson, and other members of the Bureau of Chemistry will be the focus of the next section of this paper.

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<sup>34</sup> *Id.*

### **PART III: A SERIES OF LABELING CRISES**

The first labeling crisis focused on whiskey, specifically on the question of what constituted whisky.<sup>35</sup> The difficulty derived from a particular section of the Pure Food and Drugs Act that dictated that the term “blend” should mean a mixture of like substances. In the context of whisky, Secretary Wilson signed Food Inspection Decision 45 in December 1906, just months before the creation of the Board of Food Inspection, ruling that mixtures of bourbon whisky and neutral spirits were not to be labeled “blended whisky.” Underlying Wilson’s decision was Wiley’s belief that neutral spirits, either colored or flavored, were not whisky but a cheap imitation instead. When mixed with “real” whisky, it was still not a blend but rather a mixture of like substances. Whisky, Wiley maintained, could only be produced by distilling the fermented ingredients so that the distillate contained not only ethyl alcohol but also all the products that were volatile at the required temperatures of distillation.<sup>36</sup> Neutral spirits, on the other hand, Wiley believed, produced in still, which permitted fractionating of the distillate, was ethyl alcohol but with hints of other substances that gave whisky its unique character. In other words, the distinction rested upon honesty, not necessarily wholesomeness.

Wilson’s ruling in Food Inspection Decision 45 predictably raised cries of opposition from rectifying firms who protested directly to President Roosevelt and Secretary Wilson that neutral spirits were no more than rectified, purified, and refined whisky. Even when colored and flavored they still constituted whisky and had always been known as such. Worried by the magnitude of their protest, Roosevelt attempted to study the issue himself and then implored his

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<sup>35</sup> See generally Jack High and Clayton Coppin, *Wiley and the Whisky Industry: Strategic Behavior in the Passage of the Pure Food Act*, THE BUSINESS HISTORY REV., Vol. 62, Summer 1988, (1988)

<sup>36</sup> I am grateful to Josh Billar, attorney at O’Melveny & Myers LLP, for his assistance with the technical aspects of this section of the paper

Attorney General, Charles J. Bonaparte, to do the same and make recommendations. Bonaparte, like Wiley, concluded that neutral spirits were not a like substance, prompting Roosevelt to direct Wilson's department that only a mixture of two or more straight whiskies should be called a "blend." Straight whisky mixed with ethyl alcohol should be labeled a "compound" if there were enough straight whisky to make it genuinely a mixture. Neutral spirits with color and flavor, on the other hand, should be labeled an "imitation."<sup>37</sup> Although subsequent events would later demonstrate that the whisky dispute was far from resolved<sup>38</sup>, Wiley's views had prevailed. While Wilson ostensibly supported the decision, Wiley would later come to believe that his ability to persuade President Roosevelt on this issue was a key factor leading Wilson to create the Board of Food Inspection to limit the scope of Wiley's influence with the president.<sup>39</sup> The belief would shape Wiley's behavior and reactions to similar controversies in the future.

The next labeling fight that would lead to relations between Wiley, the Board, and Wilson to further erode, focused on a product with which Wiley was intimately familiar: glucose. A sweet, highly viscous combination of cornstarch treated with hydrochloric acid, glucose was not sold directly to the public, but rather to candy and other manufacturers who embraced as an extremely cheap and cost-effective adulterant. In 1902, however, the Corn Products Refining Company began selling the product directly within the retail trade, labeling it as "Karo Corn Sirup," [sic] a name clearly adopted to overcome the public stigma attached to glucose. Shortly after the Pure Food and Drugs Law was enacted, Corn Products Refining Company sought and successfully obtained a hearing on the matter. "Glucose" it argued, was simply a trade name for

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<sup>37</sup> Anderson *supra* note 20

<sup>38</sup> The whisky labeling issue would resurface again during the Taft Administration; I had originally included it in this paper but cut it due to length concerns; President Taft, acting like both judge and jury, ultimately resolved the issue by holding a judicial hearing on the matter and later issuing a 1200 page ruling

<sup>39</sup> Coppin, *supra* note 32

a wholesome product against which the public was unduly and unfairly prejudiced, while “corn sirup” satisfied the spirit of the food law because it clearly conveyed to the customer what it was—a syrup—and where it was derived from—corn.<sup>40</sup> Wiley, unsurprisingly, disagreed. Labeling the product “corn sirup” he argued, was a fraudulent term and fraudulent practice aimed at deceiving consumers to buy something they otherwise would not.<sup>41</sup>

At first, the Board of Food and Drug Inspection agreed with Wiley and concluded that “corn sirup” was not a satisfactory label for glucose. Secretary Wilson issued the corresponding ruling, yet was once again met with strong resistance and renewed protests from Corn Products. In response, Wilson promised to hold the matter in abeyance until additional information and new evidence could be received and reviewed. Corn Products Refining Company—whose board and management were both stacked with managers from the all-power and iconic Standard Oil—brought heavy political pressure to convince Wilson and the Board of the rightness of its views. At a new hearing, the case for “corn sirup” was argued in greater detail, with particular emphasis on the extent of the various interests that would be harmed if the term could not be used. Illustrating a rift that would become characteristic of the Board in the coming years, Wiley predictably stood by his position, appalled that a rehearing had even been allowed, while McCabe and Dunlap reversed themselves and found the label “corn sirup” permissible.<sup>42</sup>

The debate finally found resolution in February 1908 when Secretary Wilson, along with Treasury Secretary Cortelyou and Commerce and Labor Secretary Strauss, jointly signed a decision sanctioning the term preferred by the industry. From Wiley’s perspective, Wilson and the Board had wrongly capitulated to Corn Products at the expense of consumer safety. The

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<sup>40</sup> *Id.* at 138-55

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

entire episode seemed to only validate his belief that the Board had only been created to keep him in check and limit his influence within the Department.

Wiley next sparred with Wilson and the Board over the section of the Pure Food and Drugs Act that banned as adulterated food any product that contained any added poisonous or other harmful ingredients that might render it injurious to health.<sup>43</sup> Sulfur dioxide, which was used widely in the production of wine, molasses, syrup, sugar, and the cultivation of fruit, was the first to create a storm of controversy. Food Inspection Decision 76 issued in June 1907 guaranteed that pending investigation, no prosecutions would be initiated against any manufacturer or farmer if the total amount of sulfur dioxide in food products could be proven to be less 350 milligrams per kilogram, and more importantly, if labels revealed its presence. In a pattern quite familiar by now, protests came from agricultural centers around the country who opposed the ruling even before it had been issued. In California, for example, fumes of sulfur were used by the fruit-drying industry as both a bleach and as a preservative, and these interests there made their concerns well-known to President Roosevelt. When Roosevelt queried the Board about the issue, he received a formal reply from Solicitor McCabe that stated that the U.S. government had gone as far as was consistent with the upholding of the law.<sup>44</sup>

Roosevelt regarded the report as conclusive but the fruit interests remain unsatisfied. They were concerned that the new regulations and requirements would impose undue burdens on both the grower and packer by raising serious doubts as to the validity of their contracts. At the height of the controversy, Secretary Wilson found himself on a tour of the West Coast. Arriving in California in August 1907, he promptly afforded the fruit growers a hearing to solicit their

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<sup>43</sup> *Id.* at 166-81

<sup>44</sup> See generally PHILIP J. HILTS, *PROTECTING AMERICA'S HEALTH: THE FDA, BUSINESS, AND ONE HUNDRED YEARS OF REGULATION*, (University of North Carolina Press) (2004)

views and give them the opportunity to voice their concerns. Persuaded by the sheer strength of their various arguments, he pledged a comprehensive and thorough investigation into the matter. While awaiting its outcome, he also promised immunity from prosecution. Upon returning to Washington, Wilson made the decision not to prosecute, and President Roosevelt agreed. Once again, Wilson's actions left Wiley angry and bewildered, convinced that the Secretary of Agriculture was putting the interests of business over that of the consumer.<sup>45</sup>

Yet it was the use of benzoate in soda as a preservative that proved to be the area of greatest conflict between Wiley and Wilson, and would ultimately lead to irreparable differences between the two men. Wiley had long held benzoate—a major ingredient in ketchup—to be harmful to human health because its conversion into hippuric acid by the metabolic processes placed an additional burden on the excretive organs when the body tried to eliminate it. Before passage of the Pure Food and Drugs Act in 1906, Wiley had informed its users that the new law would simply require them to list benzoate of soda on the label, as opposed to banning it outright. Yet, shortly thereafter, he testified to Congress that the product should not be used at all, naturally and understandably causing considerable consternation among users of the preservative. The first ruling on the matter, Food Inspection Decision 76, promised immunity from prosecution against goods packed with benzoate, provided that its use did not exceed one tenth of one percent and that its presence was listed on the label. After 1907, however, its use would be unlawful. Secretary Wilson generally agreed with the position, yet consented to a special hearing on the matter at the preservative users' request.<sup>46</sup>

Wiley secretly contacted Sebastian Mueller of the Heinz Company and informed him of the hearing, suggesting that Heinz and other non-users be present to speak out against its use, but

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*



cautioned Mueller that no one should know that Wiley had directed them to be there.<sup>47</sup> Wiley had maintained previous surreptitious contact with the Heinz Company, but the controversy surrounding the benzoate of soda forged an alliance between them. The Heinz Company employed press agents to report favorably on Wiley and his activities while at the same time attacking his opponents. Wiley would also later use his relationship with Heinz as a means to bypass Secretary Wilson and to influence President Roosevelt and later President Taft.

At the hearing, the proponents of benzoate argued in favor of its safety, averring that no one had ever been hurt by eating the preservative and that experts disagreed about its wholesomeness. Spoilage, they maintained, was a far more acute danger to American health than the chemicals used to prevent it. They further argued that a complete ban on the preservative would effectively result in the entire trade being monopolized by two or three major companies who were not dependent on benzoate in any capacity.<sup>48</sup>

Fearing that Wilson and the Board would fall victim to Wiley's staunch opposition to the use of benzoate, its users took their case directly to President Roosevelt who held a hearing on the issue in January 1908 to hear for himself the different perspectives on the matter. By this point it seemed that the president was rapidly losing confidence in his Chief Chemist. The frequent and recurring protests among those Wiley opposed as well as the constant bureaucratic infighting at the Department of Agriculture evidenced, at the very least, that something was to be said on the other side. Wiley himself felt that he had lost the Roosevelt's trust in the midst of yet another labeling dispute over saccharin, a common and cheap substitute for sugar in canned goods whose use Wiley considered a deception and a cause of kidney disease. In McCabe and

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<sup>47</sup> See Clayton Coppin and Jack High, *Umpires at Bat: Setting Food Standards by Government Regulation*, CENTER FOR THE STUDY OF MARKET PROCESSES (1992)

<sup>48</sup> FDA Records, Records of the Board of Food and Drug Inspection, Hearing No 59, Nov.4, 1907

Dunlap's opinion the weight of evidence supported the notion that it was harmless, and that until a more definitive determination could be made, its use should be permitted so long as its presence was declared on the product label. Despite these internal divisions, Wiley felt compelled to express his opinion of saccharin's harmfulness directly to President Roosevelt during a White House conference. After doing so, Roosevelt turned to Wiley and angrily responded, "Anybody who says saccharin is injurious is an idiot. Dr. Rixey gives it to me everyday."<sup>49</sup>

Roosevelt now confronted the benzoate question and it was abundantly clear that some action on the issue of added substances and preservatives—sulfur dioxide, benzoate soda, and saccharin—would have to be taken before the start of another growing season. Failure to act would create a myriad of problems otherwise. With his trust in Wiley steadily eroding, Roosevelt followed the suggestion of Congressman James Sherman, and in consultation with Secretary Wilson decided to create a panel of prominent and well-respected experts charged with determining whether or not food additives and preservatives were indeed harmful to human health. The new panel was more broadly tasked with investigating other controversial issues and issuing rulings on them. On February 24, 1908, a five-man Referee Board of Consulting Scientific Experts, headed by world-renowned chemist, President Ira Remsen of Johns Hopkins University was created. Their first assignment was to resolve the controversies surrounding sulfur dioxide, benzoate, and saccharin that had heretofore consumed the administration.

There is little doubt that one of the major reasons prompting President Roosevelt to establish the Referee Board was his loss of confidence in Wiley despite his public statements to the contrary.<sup>50</sup> Yet when asked by one aggrieved manufacturer who wanted Wiley removed why

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<sup>49</sup> Quoted in "Why I Support Wilson and Marshall" manuscript copy of address delivered in Terre Haute, Oct. 2, 1912

<sup>50</sup> Anderson, *supra* note 20

the president had not only retained him but also continued to publicly support him, Roosevelt allegedly and revealingly responded, “You don’t understand, Sir that Dr. Wiley has the grandest political machine in the country.”<sup>51</sup>

Wiley unsurprisingly viewed the establishment of the Remsen Board as a threat to his own position, an affront to his work, and the latest proof of Wilson’s efforts to undermine him.<sup>52</sup> To maintain his authority he had to challenge the Referee Board, and since Secretary Wilson supported the Board, that meant challenging Secretary Wilson.

The Chief Chemist enlisted the help of some of his most ardent supporters, including the Heinz Company and certain members of the National Association of Food and Dairy Departments, who proved more than willing to cooperate in attacking the Remsen Board and Secretary Wilson. The Association of State and National Food and Dairy Departments’ national convention at Mackinac Island in August 1908 proved to be the ideal opportunity. In his opening remarks, president of the association, E.F. Ladoff, relentlessly attacked Secretary Wilson for allegedly failing to support state and federal collaboration activities aimed at strengthening food activities and for refusing to support the committee to establish uniform safety standards.<sup>53</sup> He went on to vociferously criticize Wilson, alleging that the secretary had surrendered to special interests by consenting to the creation of the Remsen Board. Even more damning, the convention went on to pass a resolution formally condemning Secretary Wilson.<sup>54</sup> Central to the passage of the resolution were Wiley and a host of Wiley’s close friends and longtime supporters including E.H. Jenkins of Connecticut, M.A. Scovell of Kentucky, and William Frear of Pennsylvania. Wiley had employed these men in the past to articulate his

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<sup>51</sup> Letter from President Roosevelt to H. Rusby, Jan. 7, 2009

<sup>52</sup> Anderson, *supra* note 20

<sup>53</sup> *The American Food Journal*, Aug. 15, 1908

<sup>54</sup> *Id.*

position or send messages to political enemies all the while staying behind the scenes to maintain plausible deniability. While other association members at the convention objected to the resolution on the grounds that it was improper to publicly condemn a cabinet official without affording him the opportunity to defend himself, this did not deter Wiley's supporters and Wilson's detractors from securing its passage.<sup>55</sup>

The resolution garnered wide press coverage and publicity, and Wilson was naturally outraged. Unable to prove that Wiley was behind the sensational attack, Wilson maintained that, at the very least, his Chief Chemist should have defended him and the Department of Agriculture. Wiley, now fearful that the Secretary would potentially seek his resignation, solicited letters from Scovell and Ladd saying that Wiley had indeed defended the Secretary. While Wilson did not seek Wiley's resignation at this juncture, his dislike and animosity towards the Indianan reached new heights and the two men's relationship was on thin ice.<sup>56</sup>

To make matters worse, the dispute over benzoate continue unabated, rendering the schism between Wilson and Wiley even more pronounced. Since the Referee Board will still in the midst of its investigation, Secretary Wilson prohibited the publication of Wiley's report on the issue, which predictably found the preservative deleterious to human health.<sup>57</sup> Whether Wiley leaked the report or whether it was released inadvertently remains unclear, but the report was printed, creating the false impression that the government had banned the preservative. When Wilson proposed issuing a reassuring food decision that deemed benzoate safe until the Remsen Board found otherwise, Wiley refused to sign onto the decision making public the internal

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<sup>55</sup> *Id.*

<sup>56</sup> See also *Report on the Proceedings of the Twelfth Annual Convention on the Association of State and National Food and Dairy Departments*, AMERICAN FOOD JOURNAL, III Aug. 15, 1908, 1-12

<sup>57</sup> U.S. Dept. of Agriculture, Bureau of Chemistry, Circular No. 39 (1908)

division and strife among the Board of Food and Drug Inspection.<sup>58</sup> With the election of 1908 on the horizon, rumors swirled that Wiley would be ousted forcibly or asked to resign although the White House refused to acknowledge any serious disagreement among the Board or of an impending dismissal.<sup>59</sup>

In January 1909 the Remsen Board released its long-awaited decision on benzoate, concluding it was safe for consumption. Wiley incensed, once again reached out to his supporters both in Congress and in the press to condemn both the Referee Board and Secretary Wilson. In Congress, the reaction was swift. In the House of Representatives, Congressman Level of South Carolina spearheaded the unsuccessful legislative charge to amend the agricultural appropriation bill in a way that would abolish the Remsen Board, which, he asserted, was an unlawful attempt to render the Pure Food and Drugs Act impotent and to undermine Wiley by extension.<sup>60</sup> Senator Heyburn of Idaho who had sponsored the original pure-food bill, advanced constitutional arguments against the Board and in favor of Wiley, asserting that the Referee Board had been granted a function which the architects of the law had intended to remain the sole province of the judiciary.<sup>61</sup>

The press—a major player in the passage of the Pure Food and Drugs Act in 1906—was even more unforgiving, labeling the Remsen Board as agents of food adulterators and dishonest, big-moneyed business. The Century Syndicate allegedly hired Orville LaDow to lead a press campaign aimed at supporting Wiley while attacking Wilson and the Referee Board. Whether Wiley personally authorized such a well-organized and well-financed smear campaign against Wilson is unclear, but what is clear is that he was outraged by the Remsen Board's conclusion.

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<sup>58</sup> Records of the Board of Inspection, Benzoate of Soda, Food Inspection Decision 101

<sup>59</sup> Cited in the WASH POST, Dec. 29, 1908

<sup>60</sup> CONG. REC., 60 Cong. 2d Session, p. 1360, 1882, 2150-60

<sup>61</sup> *Id.*

In Wiley's view, the Referee Board had failed to recognize the spirit of the law, which had been intended to safeguard the consumer first and foremost. With close questions it was always better to err on the side of the caution, which meant erring on the side of the consumer. More troubling, the Referee Board's findings were not reviewable by any court as Congress had intended thus raising the specter that the preservative could lead to its general use in other products. The Remsen Board had answered certain narrowly defined questions, which failed to grasp the larger, more troubling ramifications of the decision, chief among them that the permissible use of benzoate by manufacturers permitted their competitors to process objectively inferior materials and thus employ unsanitary methods. Representatives of the Heinz Company brought the matter directly to President Roosevelt who in turn raised it with Remsen. Remsen dismissed the concerns as unfounded and baseless, a position which satisfied Roosevelt. On his last full day of office, a food inspection decision was issued declaring that no objection would be raised to benzoate so long as its presence each package of food was labeled to reveal its presence and indicate its amount.<sup>62</sup>

Many Wiley supporters including the Heinz Company regarded William Howard Taft's election to the presidency in 1909 as an opportunity to finally replace Wilson as Secretary of Agriculture and correct the wrongs the Roosevelt Administration had perpetrated against the Pure Food and Drugs Law. L.S. Dow, a Heinz Company representative, wrote Wiley, informing him "An inquiry of a personal nature has come to me from an important, influential source, asking for reasons why Secretary Wilson of the United States Department of Agriculture should not be reappointed to his present Cabinet position by Mr. Taft."<sup>63</sup> Wiley provided Dow with information he believed would be helpful in preventing Taft from retaining his job. Despite

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<sup>62</sup> See Food Inspection Decision 104

<sup>63</sup> Wiley Papers, letter from Wiley to Dow Feb. 12 1909

these efforts, however, Wilson remained tremendously popular with farmers—a key Taft constituency—and the portly president reappointed Wilson his Secretary of Agriculture.

The arrival of a new administration unfortunately did not herald the end of the benzoate controversy. Proponents and opponents of the Referee Board's conclusions continued to wage war against one another in the press and through indirect channels. The differences between the two sides were dramatized at the meeting of the Association of State and National Food and Dairy Departments taking place in Denver in August 1909. Wilson, fully alert to Wiley's tactics and still bitterly resentful of the attack perpetrated against him at Mackinac, was now intent on protecting himself and the Remsen Board. He stacked the convention full of supporters and made sure members of the Remsen Board were present in person so that they could defend their findings.<sup>64</sup> Wilson wrote to Taft shortly before the convention to inform the president that Wiley had concocted a plan to discredit the Remsen Board but that he was determined that it not succeed.<sup>65</sup> While Wiley and his supporters also planned carefully for the convention, in the end Wilson prevailed. After a thorough debate, Wilson narrowly secured the convention's endorsement of the Remsen Board's report on benzoate. In an even closer contest, the association also elected as its president a candidate supported by Secretary Wilson over the one backed by Wiley. Writing again to President Taft after the meeting, Wilson exulted, "We smashed the whole program, turned things end for end, endorsed the Referee Board and its findings...." He went on to call Wiley "a low-breed fellow," and a "consummate hypocrite."<sup>66</sup>

In the same letter Secretary Wilson implored the president to "Consider whether you think

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<sup>64</sup> See the Remsen Papers, Milton S. Eisenhower Library, Johns Hopkins University, Wilson to Taft, Aug. 1909

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*, Wilson to Taft, Aug. 27, 1909

it is wise to permit me to call for [Wiley's] resignation.”<sup>67</sup> Taft, pre-occupied by other bureaucratic infighting within the Department of Interior, essentially punted on the question, writing back to Wilson that he “should have to knock some heads together when I get back to Washington after my trip. There is too much of a disposition to charge people with bad faith, and too great encouragement to newspaper controversy.”<sup>68</sup> Certainly not the response Wilson was hoping to receive from the president, it was clear that conflict with Wiley would continue.

While the benzoate controversy continued to dominate the public spotlight, behind the scenes fighting at the Board of Food and Drug Inspection persisted. Some exceptions notwithstanding, most disputes found McCabe and Dunlap joining together against Wiley.<sup>69</sup> The question that most frequently arose to divide the three-member panel was which cases should be prosecuted? The sometimes byzantine rules and regulations of the Pure Food and Drugs Act made this question a salient one. For example, the three-months rule allowed pending cases to be placed in abeyance when more than ninety days elapsed without valid explanation between taking a sample and reporting in its analysis. Wiley adamantly opposed the rule, believing that it frequently resulted in excusing violations that should have been rightfully prosecuted. He regarded McCabe, Dunlap, and by extension Wilson, as too lenient in exonerating violators who pleaded honest mistake.<sup>70</sup> He felt that excusing violations until a test case was decided contravened the spirit of the law by granting more protections to manufacturers than consumers.<sup>71</sup>

Larger more substantive disagreements focused on alleged misbranding but were still quite

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*, Taft to Wilson, Aug. 31, 1909

<sup>69</sup> Coppin, *supra* note 32

<sup>70</sup> Wiley Paper, letter to Board, Mar. 7, 1910

<sup>71</sup> *Id.*



basic. For example, if a product labeled “Arrow Root Biscuit” contained only fifteen percent arrowroot starch, Wiley believed it was misbranded. Except for salt and shortening, the biscuit should be composed entirely of arrowroot for the label to be deemed accurate. When the Board of Food and Drug Inspection adopted a decision that allowed ordinary flour to be sold as gluten flour, Wiley was incensed for he believed that not only was the label deceptive but it also endangered the health of diabetics.<sup>72</sup> Such disputes were typical of the ones consuming the Board.

The disagreements amongst the various Board members were explainable by fundamental differences in approach and the manner in which they viewed the Pure Food and Drugs Act. While Dunlap and McCabe believed that the law should be enforced, they failed to possess Wiley’s unwavering crusading zeal to do so. It is unsurprising that they simply did not share the same personal attachment and sense of investment that the “Father of the Pure Food and Drug Act” did. Moreover, McCabe and Dunlap’s methodology and approach were shaped by McCabe’s professional background as an attorney. He felt it prudent to only take cases that he believed could be won, and was critical of what he perceived as the Bureau of Chemistry’s legal ignorance and ineptitude. Wiley, by contrast, was wedded to an extreme, almost radical position of enforcement of the law, saw the issue as a moral one above all else, and had little patience for the Solicitor’s legalese. Wiley was convinced that once he could get the violation into court his power of persuasion could convince any judge or jury of the rightness of his views.

By 1911, relations between Wiley and the Board had completely broken down. Indeed both McCabe and Dunlap developed a certain detachment to their work and came to reflexively oppose Wiley, regardless of what position he took. Perceived as incapable of managing his

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<sup>72</sup> Wiley Papers, Wiley to Board, Oct. 1909

department and keeping his subordinates under control, Wilson was in a difficult position that seemed increasingly untenable.<sup>73</sup>

In June 1910, Secretary Wilson issued General Order 140, which transferred to Solicitor McCabe most of the effective power of the Board of Food and Drug Inspection. The Bureau of Chemistry was to now submit the results of its investigations directly to McCabe instead of the Board, and McCabe would then advise Wilson whether or not to issue citations for possible violations. While the Board would continue to oversee hearings, recommendations whether to prosecute or not would be made exclusively by McCabe. Wiley believed that the change not only emasculated the law but also further marginalized him within the Bureau of Chemistry.

Against this background of heightened tension among Wiley, Wilson, and the Board, erupted yet another controversy, this one of a much more scandalous nature.<sup>74</sup> The dispute focused on Dr. Henry H. Rusby, a pharmacological expert employed to examine crude drugs for \$9 per day, the legal maximum permissible at the time. Having previously testified on behalf of the government during an enforcement case, Rusby now demanded \$50 a day for each day he was to appear in Court. McCabe denied the request on the grounds that it was too exorbitant, but the Bureau of Chemistry was intent that he testify in future cases. Taking a cue from the salary structure of Remsen's Board of Referees which paid its members an annual salary, Wiley suggested doing the same for Rusby. The Bureau of Chemistry could appoint him pharmacologist at a rate of \$1,600 a year, a proposal that Secretary Wilson approved. In March 1911, while Wiley was out of town, Dunlap, serving as acting chief, acquired the files related to Rusby's appointment. After consulting with McCabe and Wilson, he drafted a memorandum that enumerated a series of alleged irregularities involving the salary arrangement and forwarded

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<sup>73</sup> Anderson *supra* note 20

<sup>74</sup> Coppin, *supra* note 32 at 157-61

it to the secretary. Clearly motivated by personal animosity against Wiley, Dunlap saw an opportunity to potentially oust Wiley and quickly seized upon it.

Wilson, relying upon only what Dunlap had told him, forwarded the matter to the Agriculture Department's personnel committee, one of whose three members was Solicitor McCabe. On April 20, the committee questioned Rusby, Wiley, and other Bureau of Chemistry officials who had negotiated the annual salary with the pharmacologist. Upon concluding their interrogations, the personnel committee issued a report declaring that the \$1,600 contracted had been negotiated to cover up a secret agreement intended to pay Rusby \$20 per day in deliberate violation of the \$9 statutory ceiling. The committee concluded that Rusby should be fired and that Wiley afforded the opportunity to resign.<sup>75</sup>

Suspicious of Wiley and relying solely on McCabe's legal findings, Wilson took the matter to a cabinet meeting, declared that the Chief Chemist had violated the law, and urged that Wiley be promptly fired. Attorney General George Wickersham volunteered to evaluate the case from a purely legal perspective, and on May 14 advised President Taft to approve the personnel committee's recommendation claiming that the agreement with Rusby, "certainly merits condign punishment...."<sup>76</sup> Taft, unsure as to what to do, sat on the matter for more than two months, and on July 7 wrote to Wilson and instructed the secretary that Wiley be made privy to the Attorney General's findings and be given an opportunity to make a statement. Taft believed that Wiley had not been presented adequate opportunity to fully defend himself.<sup>77</sup>

When Wiley learned of the personnel committee's recommendations and the Attorney General's endorsement of them, he was convinced more than ever of the department-wide

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<sup>75</sup> Hearing before the Committee on Personnel, Apr. 20, 1911

<sup>76</sup> Wickersham to Taft, May 13, 1911, USDA General Records; Copin, *supra* note 32

<sup>77</sup> Letter from Taft to Secretary Wilson, July 7, 1911, for full report see, EXPENDITURES IN THE DEPARTMENT OF AGRICULTURE

conspiracy against him and saw the entire affair as an opportunity to expose it once and for all. “We need no defense,” he told one of his clerks, “I am planning an attack.”<sup>78</sup> A week later, the New York Times caught wind of the story and broke the news, publishing several documents related to the Rusby appointment. Within a few short days, the entire nation new that Wiley’s tenure was under attack. As it had done so consistently in the past, the press came to Wiley’s defense.<sup>79</sup> Letters, resolutions, and statements of concern flooded Taft’s, Wilson’s, and Congressional offices, a great percentage of which consisted of loyal Republicans who emphasized the high esteem in which the public held Wiley. To foreshadow the dilemma that would confront the President a few months later, these Republicans warned that Taft’s presidential candidacy and the success of the Republican Party in 1912 were at stake should Wiley be dismissed.<sup>80</sup>

The Chief Chemist meanwhile had been preparing a statement of defense for President Taft in which he condemned the personnel committee as well as the tactics used against him. He relied on precedent from the Remsen Board and had secured approval for the arrangement from Secretary Wilson. What wrong had he committed? The statement was forwarded to the White House, and Secretary Wilson, realizing what was at stake, was now unwilling to support the personnel committee’s recommendations. He felt instead that a small slap on the wrist would suffice.<sup>81</sup> Wilson’s sudden ambivalence led other administration officials to similarly equivocate. Attorney General Wickersham sent a letter to Taft expressing regret for not advising

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<sup>78</sup> F.B. Linton, *Federal Food and Drug Laws—Leaders Who Achieved their Enactment*, DRUG COSMETIC LAW QUARTERLY (1949)

<sup>79</sup> See e.g., N.Y. TIMES, July 13, 1911; N.Y. GLOBE & COMM. ADV., July 14, 1911; OHIO ST. J., July 20, 1911

<sup>80</sup> Wiley Papers and Investigations; Coppin, *supra* note 32

<sup>81</sup> *Id.*

a lighter sentence for Wiley. It would be a mistake, he maintained, to remove Wiley now.<sup>82</sup>

Confronting a barrage of both public and private pressure to retain Wiley, Taft realized that it was politically impossible to dismiss Wiley, despite his personal feelings towards him. He began making statements in the press supportive of Wiley and ordered both the Attorney General and Solicitor McCabe to examine the various precedents Wiley had cited in his statement to the president. Taft also closely monitored the House committee hearings that had commenced under Chairman Randolph Moss of Indiana and entailed a sweeping investigation of not just the Rusby affair but Bureau of Chemistry more generally. The hearings exposed all the strife and infighting that characterized the Bureau of Chemistry and the Department of Agriculture more broadly. Upon the completion of Moss' hearings, Taft issued a decision that would foreshadow his days as a Supreme Court Justice. While he exonerated Wiley of any wrongdoing citing precedent for the salary arrangement that had been negotiated, he expressed deep concern for some of the larger issues afflicting the Bureau that had been exposed by Moss Committee. Taft concluded his ruling by warning that more radical action may be required.<sup>83</sup>

Newspapers across the country celebrated Taft's decision but pondered what the president had meant by "radical action." Clearly heads would roll within the Department, but the question that remained was whose heads they would be. The answer came in October when Secretary Wilson issued General Order 147, replacing McCabe on the Board of Food and Drug Inspection with Roscoe E. Doolittle, a prominent scientist based in New York. The Taft Administration went far to satisfy Wiley despite Taft's and Wilson's misgivings about doing so. Wiley now effectively controlled the Board since Doolittle could be counted on to support the Chief

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<sup>82</sup> Letter from Wickersham to Taft, July 18, 1911

<sup>83</sup> Letter from Taft to Secretary Wilson, Sept. 14, 1911

Chemist.<sup>84</sup> The Board, which had been thrust to the periphery over the years, would now play the principal role in ascertaining when citations for hearings should be issued and when cases for alleged violations of the law should be prosecuted. The solicitor was now relegated to doing little more than preparing cases and referring them to the appropriate agencies. Although Wilson thought they had gone too far to satisfy Wiley, it was clear that the political calculation that Taft had done came out in favor of the Chief Chemist.<sup>85</sup>

The relative peace and tranquility that descended on the Bureau of Chemistry after the organizational change would be short-lived. The controversy, over baking soda, proved explosive<sup>86</sup>, and would herald the end of Wiley's long government career. The dispute began on February 27 when newspapers around the country reported a story that, despite Dunlap's protestations, Wiley and Doolittle had united to abate cases against cream-of-tartar baking powders in which lead had been discovered. The press charged that Wiley, long opposed to alum baking powders, had based his decision out of a desire to protect their competitors.<sup>87</sup> To add insult to injury, several confidential Board memoranda illustrating the internal fighting among the Board members, had been published as well, having undoubtedly been leaked to the press by Dunlap or someone in his office.<sup>88</sup>

It was now clear that Wiley would resign under circumstances patently unfavorable to the Republican Party. On March 1, Wiley met with Secretary Wilson and made a series of demands, most prominent of which called for Dunlap's dismissal. Wiley made clear that either his demands be met or he would resign. Wiley's resignation would undoubtedly plunge Republicans

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<sup>84</sup> Coppin, *supra* note 32

<sup>85</sup> *Id.*

<sup>86</sup> No pun intended!

<sup>87</sup> Coppin, *supra* note 32 at 167

<sup>88</sup> *Id.*

into an intractable political dilemma.

On March 15 Wiley went to Secretary Wilson's office to submit his resignation. The two men talked for an hour. Wilson indeed recognized the political challenge confronting the administration but was unwilling to placate Wiley any further. In his view, Wiley's position to a large extent was self-afflicted. He did not trust Wiley and thought him to be a grandstander and a show-boater. He had appeased him once, but was not prepared to do so again. He informed Wiley that he regretted his decision to resign but would not remove any more of his political foes.<sup>89</sup>

Wilson announced Wiley's resignation during a cabinet meeting shortly thereafter. President Taft, well aware of the conundrum he now had on his hands, immediately ordered the search for a replacement. In a statement to reporters, Taft expressed regret at Wiley's departure, lamenting, "I am very sorry to lose Dr. Wiley, who has done a great work in initiating and enforcing the operation of the pure food law, and I would be very glad if he could continue in the service of the government."<sup>90</sup> Unfortunately for Taft, Wiley had no such intention. Not only would he not remain in government service, he would campaign against the Republican incumbent in the upcoming presidential election.

#### **PART IV: RAMIFICATIONS FOR THE PRESIDENTIAL ELECTION OF 1912**

Wiley's resignation would have profound ramifications for the presidential election of 1912. Given his national stature and the incredibly high esteem in which the public held him, Wiley's departure would prove fatal for Republicans during an election year.

The Chief Chemist hoped that even in his absence, the uncommitted, unworthy officials who he had previously worked with, and who in his opinion had compromised the administration

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<sup>89</sup> *Id.*

<sup>90</sup> N.Y.TIMES Mar. 16, 1912

and enforcement of the pure food and drugs law, would be dismissed.<sup>91</sup> Taft, however, refused to act. A zealous crusader-warrior, Wiley now felt that he could no longer sit idly and quietly by. In his view, President Roosevelt had subverted his efforts to enforce the Pure Food and Drugs Act in the manner intended by Congress, and had readily sacrificed consumer safety on the altar of big business.<sup>92</sup> William Howard Taft inherited a problematic, albeit difficult situation, yet failed to rectify it. A partisan Republican his entire life, Wiley remained steadfast to the GOP out of conviction that the party would not “suffer itself...to become the refuge and protector of the gambler, the dollar lover, the cheat and the adulterator,” but now, after his exhaustive time in government, he thought the party “so completely subjugated by the Dollar, so permeated by the canker of Big Business as its only god, that only...defeat can ever restore its health.”<sup>93</sup>

And work for the GOP’s defeat Wiley did. A lifelong Republican, he leveraged his national fame as pure-food reformer to campaign for Democratic candidates across the country. He authored an article for *The Democratic Text-Book*. He served as vice-president of the Woodrow Wilson National Progressive Republic League and also as the chair of the Bureau of Health Conservation of the Women’s National Woodrow Wilson and Marshall Organization. Wiley even took to the stump to persuade other lifelong Republicans like himself to support Democratic candidates.

Recognizing the political liability the pure food and drugs issue was becoming for him, Taft tried in vain to architect an attempt to dissuade Wiley from attacking him and the Republican Party over the Pure Food and Drugs Act. The attempt was unsuccessful and Wiley

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<sup>91</sup> Anderson, *supra* note 20

<sup>92</sup> *Id.*

<sup>93</sup> Wiley, “Why I support Wilson and Marshall”



was relentless in his criticism, later declaring that he was convinced that “when [Woodrow] Wilson and Marshall have taken office, the food laws of the country will be administered for the public good as intended, both in spirit and in the letter of the law.”<sup>94</sup> Democrats were grateful to have such a potent weapon in their arsenal, with prominent Democrats eagerly soliciting the reformer’s help while Woodrow Wilson himself personally discussed the pure food issue on several occasions.<sup>95</sup>

In the end the Wiley’s campaign against the GOP proved successful. He had effectively leveraged his stature and nationally recognized expertise in the area to turn the pure food and drugs issue decisively against the Republicans. Doing so ultimately contributed to Wilson’s ascension to the presidency in the election and to Taft’s defeat in the election of 1912.

### **Concluding Thoughts**

In the end, it is difficult not to see both Wiley and Wilson in different lights than the ones history has put them in. Posterity has celebrated Wiley as a hero, a champion of public affairs, and a principled consumer protection advocate above all else, who refused to compromise when the nation’s health was at stake. Wilson, on the other hand, has been condemned, reviled, and portrayed as the villain to Wiley’s protagonist. One expert portrays Wilson as Wiley’s “nemesis” who “showed a total incapacity to understand Wiley’s position or take a stand on matters of public health.”<sup>96</sup> The authors of *100,000,000 Guinea Pigs*, were even more critical,

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<sup>94</sup> *Id.*

<sup>95</sup> See e.g., N.Y.WORLD, Sept. 5, 1912, WASH. EVEN. STAR, Sept. 18, 1912

<sup>96</sup> ROBERT M. CRUNDEN, *MINISTERS OF REFORM: THE PROGRESSIVE ACHIEVEMENT IN AMERICAN CIVILIZATION, 1889-1929* 184-89 (Basic Books) (1982)

writing “...this permission to poison, casually granted by the technically ignorant and socially indifferent Secretary of Agriculture stands to this day unchanged.”<sup>97</sup>

While there is no doubt that Wiley was indeed an effective consumer protection advocate with a warrior’s zeal and determination, the fact remains that he engaged in some highly questionable tactics against both his superiors and colleagues to achieve his ends. As one expert points out, “he was a great man, but also self-righteous, who had a hard time seeing anyone else’s point of view but his own, and was willing to do almost anything to get what he wanted.”<sup>98</sup>

Wilson, on the other hand, supported Wiley as much as he could, and despite harboring deep-seated doubts about Wiley’s intentions and personal integrity after being the target of his repeated attacks, continued to encourage and support him, even going so far as to appease Wiley on certain issues to retain the Chief Chemist’s services. While it is easy to praise Wiley at Wilson’s expense, it is clear that Wilson allowed Wiley to succeed as far as he and the prevailing circumstances would allow. More importantly, Wilson’s other accomplishments should not be obscured by his contentious relationship to Wiley. Wilson was set new records through his sixteen years as Secretary, and laid the groundwork for the modern day Department of Agriculture. These are not insignificant achievements

Ultimately, as this paper has sought to demonstrate, both these men and the others within the Bureau were political actors operating in highly charged political environments, making political decisions. Looking at Wilson, Wiley, and the Bureau of Chemistry’s attempts to administer and enforce the Pure Food and Drugs law through a political prism allows one to garner an entirely new perspective on those years following passage of the historic law and leads

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<sup>97</sup> ARTHUR KALLET AND F.J. SCHLINK, 100,000,000 GUINEA PIGS 201-02 (Grosset and Dunlap) (1933)

<sup>98</sup> Interview with the Honorable Ro Khanna, Deputy Assistant Secretary of Commerce, United States Department of Commerce, February 23, 2011

to the inescapable conclusion that politics will always have an inevitable effect on the work of those dedicating their lives to public service and to a cause greater than themselves. Wilson, Wiley, and the others within the Bureau of Chemistry were no exception.

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